

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Michael Kubayanda, Chairman;
Ann C. Fisher, Vice Chairman;
Mark Acton;
Ashley E. Poling; and
Robert G. Taub

Application for Waiver
USPS Marketing Mail Carrier Route Flats

Docket No. RM2022-12

ORDER APPROVING POSTAL SERVICE
APPLICATION FOR WAIVER UNDER 39 C.F.R. § 3030.286

(Issued August 30, 2022)

I. INTRODUCTION

On August 8, 2022, the Postal Service filed an application for waiver pursuant to 39 C.F.R. § 3030.286 requesting that the Commission waive the applicability of 39 C.F.R. § 3030.283 for the workshare discount associated with USPS Marketing Mail Carrier Route Flats dropshipped at the Destination Delivery Unit (DDU) in the next rate adjustment filing.¹ For the reasons discussed below, the Commission approves the Postal Service's waiver request.

¹ United States Postal Service Application for a Waiver Under 39 CFR § 3030.286, August 8, 2022 (Application). The Postal Service's Application is accompanied by a Statement in Support of Waiver Application (Supporting Statement).

II. BACKGROUND

As part of Docket No. RM2017-3, the Commission adopted rules that established limitations on the Postal Service's ability to propose a workshare discount above its avoided costs (excessive workshare discount) and to propose a workshare discount below its avoided costs (low workshare discounts).² As the Commission emphasized throughout Docket No. RM2017-3, both excessive and low workshare discounts lead to inefficient pricing.³ Pricing efficiency is achieved when workshare discounts adhere to Efficient Component Pricing (ECP) and have resulting passthroughs of 100 percent.⁴ Thus, the Commission's rules related to workshare discounts are intended to result in discounts that adhere as closely as practicable to ECP principles.⁵ The Commission sought to balance the limitations on workshare discounts with the statutory scheme already in place, which permits certain exceptions. See 39 U.S.C. § 3622(e)(2)(A)-(D) and (e)(3). Thus, the Commission created a waiver application process to allow the Postal Service to set workshare discounts that do not adhere to 39 C.F.R. §§ 3030.283 and 3030.284 under certain, limited circumstances. The Commission intended for the waiver application process to be used only in "exceptional circumstances" and stated that it would "ensure the Postal Service's strict adherence to the waiver regulation [codified in 39 C.F.R. § 3030.286]." Order No. 5763 at 213-214.

² See 39 C.F.R. §§ 3030.283 and 3030.284. See also Docket No. RM2017-3, Order Adopting Final Rules for the System of Regulating Rates and Classes for Market Dominant Products, November 30, 2020 (Order No. 5763); Postal Accountability and Enhancement Act (PAEA), Pub. L. 109-435, 120 Stat. 3198 (2006).

³ Order No. 5763 at 198; Docket No. RM2017-3, Notice of Proposed Rulemaking for the System for Regulating Rates and Classes for Market Dominant Products, December 1, 2017, at 93 (Order No. 4258).

⁴ Order No. 4258 at 87-89; Order No. 5763 at 198. The relationship between workshare discounts and avoided costs is usually expressed as a percentage called a passthrough, which is calculated by dividing the discount by the avoided cost. Workshare discounts with passthroughs below 100 percent are considered below avoided cost workshare discounts.

⁵ Order No. 4258 at 87; Order No. 5763 at 198.

Pursuant to 39 C.F.R. § 3030.283, a workshare discount proposed by the Postal Service in any rate adjustment filing that exceeds the cost avoided must either be associated with a new postal service, a change to an existing postal service, or a new workshare initiative; be at least a 20 percent decrease from the existing workshare discount; or be provided in connection with a subclass of mail consisting exclusively of mail matter of educational, cultural, scientific, or informational value (39 U.S.C. § 3622(e)(2)(C)) and complies with 39 C.F.R. § 3030.285(c).⁶

If the proposed workshare discount does not comply with the limitations of 39 C.F.R. § 3030.283, the Postal Service must file an application for waiver pursuant to 39 C.F.R. § 3030.286. See 39 C.F.R. § 3030.283(d); 39 C.F.R. § 3030.286. The Postal Service's waiver application must be supported by a preponderance of the evidence and demonstrate that a waiver from the limitations imposed by 39 C.F.R. § 3030.283 should be granted. See 39 C.F.R. § 3030.286(b). The Postal Service must include the grounds for a waiver, including all relevant supporting analysis; the length of time the waiver will be necessary; for each subsequent rate adjustment filing planned to occur during the length of time for which a waiver is sought, a representation of the proposed minimum amount of the change to the workshare discount; and any other relevant information. See also 39 C.F.R. § 3030.286(c)(1) through (3) and (8). Grounds for waiver for an excessive workshare discount and the required accompanying information are set forth in 39 C.F.R. § 3030.286(c)(4) through (7).⁷

⁶ See 39 C.F.R. § 3030.283. The relationship between workshare discounts and avoided costs is usually expressed as a percentage called a passthrough, which is calculated by dividing the discount by the avoided cost. Workshare discounts with passthroughs above 100 percent are considered excessive workshare discounts.

⁷ Grounds for waiver for an excessive cost workshare discount relate to rate shock; impeding efficient postal operations; a loss of volume in the affected category of mail and a reduction in the aggregate contribution to the Postal Service's institutional costs from the mail that is subject to the discount; and non-compensatory products. See 39 C.F.R. § 3030.286(c)(4) through (7).

III. APPLICATION FOR WAIVER

On August 8, 2022, the Postal Service requested a waiver of 39 C.F.R. § 3030.283 for the workshare discount associated with USPS Marketing Mail Carrier Route Flats dropshipped at the DDU in the next rate adjustment proceeding to be filed no sooner than October 7, 2022. Application at 1. The Postal Service states that the methodology used in calculating passthroughs for USPS Marketing Mail flat-shaped pieces results in volatile passthrough percentages, making compliance with 39 C.F.R. § 3030.283 difficult. Application, Supporting Statement at 3. It further states that, to overcome this volatility and comply with 39 C.F.R. § 3030.283, would require irrational pricing. *Id.* at 6-7. The Postal Service illustrates this issue in a worksheet that accompanies the Supporting Statement. *Id.* at 7; see also Excel file “RM2022-12 Waiver.xlsx,” August 8, 2022.

The Postal Service maintains that its waiver request should be granted for three reasons. First, the Postal Service intends to “seek approval of prices that will minimize non-compliance and its consequences” and would be limited to the passthrough for USPS Marketing Mail Carrier Route Flats pieces dropshipped at the DDU. Application, Supporting Statement at 8. Furthermore, it states that, because the volume of these pieces is relatively low, “the cost of [] non-compliance is only approximately, \$200,000...and that amount will inure to the benefit of the mailers in any event.” *Id.* Second, the Postal Service maintains that compliance with 39 C.F.R. § 3030.283 would require irrational pricing due to “happenstance,” and not “the result of any failure of effort, planning, or implementation by the Postal Service.” *Id.* at 8-9. Finally, the Postal Service believes additional waivers of this nature for USPS Marketing Mail Flats will not be necessary beyond the next rate adjustment proceeding. *Id.* at 9. This is because the Postal Service is “investigating structural changes in [the] pricing of flat- and parcel-shaped pieces leading to a simplified methodology in the calculation of passthroughs.” *Id.*

For these reasons, the Postal Service seeks to set the workshare discount associated with USPS Marketing Mail Carrier Route Flats pieces dropshipped at the DDU above the avoided costs such that the workshare discount's passthrough is 105.0 percent. *Id.* at 8.

IV. COMMENTS

The Commission received comments from the Public Representative, the National Newspaper Association, Inc. (NNA), and the Association for Postal Commerce (PostCom), in response to the Postal Service's Application for Waiver.⁸

A. Public Representative

The Public Representative supports the approval of the Postal Service's application for a waiver and finds that "the Postal Service has sufficiently demonstrated that complying with [39 C.F.R.] § 3030.28[3] would result in irrational pricing."⁹ She further states that waiving the requirements of 39 C.F.R. § 3030.283 with respect to USPS Marketing Mail Carrier Route Flats dropshipped at the DDU is preferable to waiving the same requirements for mailpieces dropshipped at the Destination Sectional Center Facility (DSCF), as "DSCF is the larger category in terms of volume." *Id.* at 3.

Nevertheless, the Public Representative recommends that the Commission require the Postal Service to "set the DDU discount as close as possible to 100

⁸ See Public Representative Comments, August 16, 2022 (PR Comments); Comments of National Newspaper Association, Inc., August 16, 2022 (NNA Comments); Comments of the Association for Postal Commerce, August 16, 2022 (PostCom Comments).

⁹ PR Comments at 2-3. The Public Representative cites to 39 C.F.R. § 3030.284, which outlines the limitations on workshare discounts below avoided costs. However, the Postal Service's Application for Waiver involves an excessive workshare discount. See *generally* Application for Waiver. The Commission notes that, despite her reference to 39 C.F.R. § 3030.284, the Public Representative appropriately discusses the Application for Waiver's in terms of its compliance with 39 C.F.R. § 3030.283, which outlines the limitations for excessive discounts.

percent.” *Id.* She suggests that the Postal Service set the workshare discount for USPS Marketing Mail Carrier Route Flats dropshipped at the DDU to \$0.577, instead of the proposed \$0.576, decreasing the passthrough from the proposed 105 percent to 104.9 percent, thereby bringing the workshare discount closer to 100 percent. *Id.* The Public Representative asserts that the Postal Service could set the workshare discount to produce a passthrough of 104.9 percent “without disrupting rational rate relationships.” *Id.*

B. National Newspaper Association, Inc.

NNA supports the approval of the Postal Service’s waiver application for two reasons. First, it contends “pushing DDU rates higher than the already-planned 2023 increases would simply aggravate a hardship for locally-based [USPS] Marketing Mail publications.” NNA Comments at 2. Second, NNA states that “the relationship between DDU and DSCF mailings should be maintained to provide maximum-possible incentives for locally-entered mail,” and that changing that relationship “has the potential to distort mailer behavior, to the detriment of the DDU and the DDU-entered mail.” *Id.*

C. PostCom

PostCom states that it does not oppose the Postal Service’s waiver application request, that it is supported by evidence and should result in improved pricing. PostCom Comments at 1, 4. However, it contends that the rules regulating workshare discounts “elevates technical compliance and may undermine more important objectives—namely rate predictability and stability.”¹⁰

¹⁰ *Id.* at 1. Additionally, PostCom acknowledges that it discusses topics that are beyond the scope of a waiver application proceeding (*i.e.*, Commission’s “lack of curiosity” as it relates to Postal Service announcing changes to its processing and transportation network, the impact of the dismantling of the Flats Sequencing System and the burdens imposed on mailers who use Flats products). See *id.* at 3, 4.

PostCom states that the Commission reviews passthroughs at the rate level, which is the lowest available level of aggregation for cost and revenue data and the aggregation level that exhibits the greatest amount of volatility. *Id.* at 2. It notes that there is a “divergence” in the physical characteristics between USPS Marketing Mail Flats dropshipped at the DDU compared to Flats from the other rate levels (e.g., those dropshipped at the DSCF), which “appears to be the proximate cause of the irrational prices the Postal Service is seeking to avoid.” *Id.* It further notes mailers entering USPS Marketing Mail Flats at different rate levels may have different needs. *Id.* As a result, PostCom contends that treating all USPS Marketing Mail Flats as a single product may produce inefficient pricing signals because it binds the rates of mailers who may be using USPS Marketing Mail Flats for contrasting purposes. *Id.*

Noting the Postal Service’s statement that it is considering broader changes to the pricing of USPS Marketing Mail Flats to avoid future need for waiver applications, PostCom contends that the Commission should require the Postal Service to explain what those changes will be. *Id.* at 2-3. PostCom expresses concern that the incremental nature of the Postal Service’s waiver application could be indicative of postponing a broader reassessment by the Postal Service of its flats-shaped mailpiece offerings, especially in light of the extensive network changes announced by the Postal Service. *See id.* at 3.

V. COMMISSION ANALYSIS

Commission rules require that a Postal Service application for waiver must be supported by a preponderance of the evidence and demonstrate that a waiver from the limitations imposed by 39 C.F.R. § 3030.283 should be granted. 39 C.F.R. § 3030.286(b). “Preponderance of the evidence means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.” 39 C.F.R. § 3030.286(b). With an application for waiver, the Postal Service must include “a specific and detailed statement” that contains, among

other things, “[t]he reason(s) why a waiver is alleged to be necessary (with justification thereof), including all relevant supporting analysis and all assumptions relied upon.” 39 C.F.R. § 3030.286(c)(1). In order for the Postal Service to claim that setting an excessive workshare discount closer to or equal to avoided costs would impede efficient operation of the Postal Service, it must provide the following: (1) a description of the operational strategy at issue; (2) quantitative analysis (or if not available, qualitative analysis) indicating how the workshare discount at issue relates to that operational strategy; and (3) an explanation of how setting the workshare discount in compliance with 39 C.F.R. § 3030.283(c) would impede that operational strategy. 39 C.F.R. § 3030.286(c)(5). The Commission finds that the Postal Service has satisfied the requirements of 39 C.F.R. § 3030.286.

Although the Postal Service does not cite to the rule directly,¹¹ based on the information provided and pursuant to 39 C.F.R. § 3030.286(f), the Commission finds that the Postal Service’s Application for Waiver is consistent with 39 U.S.C. § 3622(e)(2)(D) and 39 C.F.R. § 3030.286(c)(5). Furthermore, the Commission finds that the Postal Service provided the specific information required by 39 C.F.R. § 3030.286(c)(5)(i) through (iii). Consistent with these requirements, the Commission completes its analysis.

As noted above, the Postal Service explained that the “operational strategy” at issue is maintaining rational pricing while complying with workshare regulations in 39 C.F.R. part 3030, subpart J. Application, Supporting Statement at 5-6. The Postal Service explains that calculating the passthrough percentage for USPS Marketing Mail Flats is different than calculating the passthrough percentage for most other products.¹²

¹¹ The Commission reminds the Postal Service that, with any Application for Waiver, it must explicitly cite to one of the exceptions permitted in 39 C.F.R. § 3030.286(c)(4) through (7) and encourages the Postal Service to better explain how the evidence it submits meets the specific informational requirements of 39 C.F.R. § 3030.286(c)(4) through (7).

¹² *Id.* In most other cases, the passthrough percentage is calculated by subtracting the unit discount from the published benchmark price provided in the relevant pricing table, then divided by the avoided cost. See *id.* at 3.

Id. The Postal Service further explains that workshare discounts and the passthrough percentage for USPS Marketing Mail Flats are calculated on a weighted basis after mailing when the weights and numbers of mailed pieces are known. *Id.* at 3. The Postal Service notes that between Fiscal Year (FY) 2021 Quarter 4 and FY 2022 Quarter 3, there was a great disparity in the volumes and weights of USPS Marketing Mail Carrier Route Flats entered at the different dropship levels. *Id.* at 4-5. Pursuant to 39 C.F.R. § 3030.286(c)(5)(ii), the Postal Service provided “quantitative analysis” in an Excel file that demonstrates the effects of changing prices and average weights on passthrough percentages for USPS Marketing Mail Carrier Route Flats at different dropship levels. See Excel file “RM2022-12 Waiver.xlsx.”

The Commission concurs with the Postal Service and finds that the Excel file illustrates it is mathematically impossible for *both* the DSCF and DDU passthrough percentages to be compliant with the requirements of 39 C.F.R. § 3030.283, at least without resorting to irrational pricing. See Application, Supporting Statement at 6-7 (emphasis added). If the passthrough at issue is set at 100 percent, the DDU dropship price will be higher than the DSCF dropship price. See *id.* at 7. Such a result would be irrational because a rational pricing structure would involve setting prices for mail dropshipped closer to the end destination lower than the prices for mail dropshipped further from the end destination. In this instance, the DDU is closer to the end destination than the DSCF, and as such, the prices for mail dropshipped at the DDU should be lower. See *id.* at 6, Figure 3. Therefore, the Commission concludes that setting the workshare discount associated with USPS Marketing Mail Carrier Route Flats dropshipped at the DDU closer or equal to the cost avoided would impede the “operational strategy” of maintaining rational pricing and that the Postal Service’s Application for Waiver complies with the requirements of 39 C.F.R. § 3030.286.

Furthermore, the Commission reiterates that it received no comments in opposition to the Postal Service’s Application for Waiver. See *generally* PR Comments;

NNA Comments; and PostCom Comments. However, the Public Representative and PostCom present recommendations for consideration.

First, although the Public Representative supports the Postal Service's Application for Waiver, she recommends that the Commission require the Postal Service to set the workshare discount to produce a passthrough of 104.9 percent, which is below the proposed passthrough of 105.0 percent. See PR Comments at 3. The Commission agrees with the Public Representative in principle that the Postal Service should set workshare discounts as near to their avoided costs as possible and encourages the Postal Service to minimize workshare discount noncompliance as much as possible to achieve the highest possible level of pricing efficiency. See *id.* However, the Commission finds that at this juncture, requiring the Postal Service set a workshare discount at a specific price of \$0.576 to achieve a specific passthrough of 104.9 percent as opposed to 105.0 percent, as the Public Representative suggests, would constrain the Postal Service's pricing flexibility and would be inconsistent with 39 U.S.C. § 3622(b)(4).

Second, PostCom asserts that the Commission should require the Postal Service to amplify its explanation of the changes under consideration for the proposed pricing of USPS Marketing Mail Flats to avoid future need for waiver applications.¹³ The Postal Service notes that it has been "investigating solutions" such as "structural change in pricing of flat- and parcel-shaped pieces" that will lead to "a simplified methodology in

¹³ PostCom Comments at 2-3. The Commission also notes that PostCom discusses several issues, which it acknowledges are outside the scope of a Commission review pursuant to 39 C.F.R. § 3030.286. See *id.* at 4. These issues include PostCom's concern to its perceived "lack of curiosity" on the part of the Commission as it relates to Postal Service announcing changes to its processing and transportation network, as well as the impact of the dismantling of the Flats Sequencing System and the burdens imposed on mailers who use Flats products. See *id.* at 3, 4. The Commission does not address the issues raised by PostCom that fall outside the scope of its review under 39 C.F.R. § 3030.286. With respect to the broader concern that the Commission's workshare discount regulations "may undermine ... rate predictability and stability" (see *id.* at 1), the Commission reiterates that it balanced all 9 of the statutory objectives (including to "create predictability and stability in rates," as provided by Objective 2). 39 U.S.C. § 3622(b)(2)) when codifying those regulations. See Order No. 5763 at 320-321.

the calculation of passthroughs.” Application, Supporting Statement at 9. It further states that “this (and similar) waivers” related to USPS Marketing Mail Flats will not be necessary beyond the potential next rate adjustment proceeding. *Id.* The Commission finds that the Postal Service’s explanation complies with 39 C.F.R. § 3030.286(c)(2) and that no additional information, as suggested by PostCom, is required by 39 C.F.R. § 3030.286 to resolve the pending Application for Waiver. The Commission encourages the Postal Service to communicate broader proposals to change pricing to stakeholders in advance and to gather industry feedback.

However, the Commission does note that the waiver application process was intended to apply in limited exceptional circumstances. See Order No. 5763 at 213-214. The Commission’s approval in this proceeding is, in part, based on the Postal Service’s explanation that the circumstances surrounding its Application for Waiver are both exceptional and unlikely to reoccur. See *generally* Application, Supporting Statement. The Commission expects that the Postal Service shall file a fully supported proposal that would correct the anomaly as soon as practicable and in time for the Commission to fully approve the new structure and/or methodology before the planned July 2023 price increase. Should the Postal Service fail to simplify the methodology related to USPS Marketing Mail Flats passthroughs as it has stated it will, the Commission may take that into account in the future should additional Applications for Waiver be necessary.

For these reasons discussed above and consistent with comments received, the Commission approves the Postal Service’s Application for Waiver. The Postal Service may set the workshare discount for USPS Marketing Mail Carrier Route Flats dropshipped at the DDU above its avoided costs to produce a passthrough as close as practicable to 100.0 percent, while maintaining rational prices, in the next general Market Dominant rate adjustment filing planned to be filed no earlier than October 7, 2022.

VI. ORDERING PARAGRAPHS

It is ordered:

1. The United States Postal Service Application for a Waiver Under 39 CFR § 3030.286, filed August 8, 2022, is approved.
2. The Postal Service may set the workshare discount for USPS Marketing Mail Carrier Route Flats dropshipped at the Destination Delivery Unit (DDU) above its avoided costs to produce a passthrough as close as practicable to 100.0 percent, while maintaining rational prices, in the next general Market Dominant rate adjustment filing planned to be filed no earlier than October 7, 2022.
3. The Commission expects that the Postal Service shall file a fully supported proposal that would correct the anomaly as soon as practicable and in time for the Commission to fully approve the new structure and/or methodology before the planned July 2023 price increase.

By the Commission.

Erica A. Barker
Secretary